FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 632/2006
(Pralhad Gulabrao Yeole through L.Rs. Vs. Vijay Madhukar Kadu & anr.)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. J.J. Chandurkar, Adv. for appellants.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 3rd DECEMBER, 2007.

Heard Shri Chandurkar for the appellants.

The appellants are the original plaintiffs. A suit was filed by the plaintiffs for a declaration that the plaintiffs are the owners of the suit property which they had inherited after the death of Subhadrabai. They further sought a declaration that the alleged Will executed by Subhadrabai in favour of the defendants on 18/9/1986 was void and the defendants could not have claimed ownership over the suit property on the basis of the said Will. The plaintiffs are the nephews of the husband of Subhadrabai by name Ramkrishna. One of the defendants is the nephew of Subhadrabai and the another defendant is the nephew of husband of Subhadrabai.

The defendants filed written statement and denied the claim of the plaintiffs. It was pleaded by

the defendants that Subhadrabai had executed a Will in favour of the defendants on 18/9/1986 and it was also registered on the same day. The defendants sought dismissal of the plaintiffs' suit.

Both the Court concurrently held that the Will executed by Subhadrabai in favour of the defendants on 18/9/1986 was a valid and genuine Will. The Courts further held that in view of the fact that the defendants had proved the Will executed in their favour, the plaintiffs were not entitled to seek the possession of the suit property from the defendants. The judgments passed by both the Courts are challenged in the instant second appeal.

Shri J.J. Chandurkar, the learned counsel for the appellants, submitted that the Courts were not justified in holding that the Will dated 18/9/1986 was duly proved by the defendants as the defendants had examined only one attesting witness to the Will and the said witness had not categorically deposed that the Will was signed by the testator in the presence of the other attesting witness by name Mahadeo. According to the counsel for the appellants, in view of the aforesaid omission on the part of the attesting witness examined on behalf of the defendants, there is non-compliance of the provisions of Section 63 (c) of the Indian Succession Act. He relied on a decision in the case of **Janki Narayan Bhoir Vs. Narayan**

Namdeo Kadam reported in **AIR 2003 Supreme Court 761**, to substantiate the aforesaid submissions.

Both the Courts have concurrently held that the defendants have succeeded in proving the Will executed in favour of the defendants. The submission made on behalf of the appellants, is not acceptable. I have perused the oral evidence tendered by the attesting witness Bhimrao. It is categorically mentioned by the witness in his examination-in-chief that Subhadrabai put her thumb impression on the Will in the presence of the attesting witnesses. It is further stated in the examination-in-chief that the contents of the Will were read over to Subhadrabai and to the attesting witness. It is further stated in the examination-in-chief that though witness Mahadeo was also present at that point of time, he is now dead. He further deposed that the thumb impression on the Will was Subhadrabai's thumb impression and he himself had signed the Will in her presence. In the cross-examination, it is further stated by the witness that after Subhadrabai purchased the stamp from stamp vendor, the scribe started writing the contents of the Will on the same. The contents of the Will were thereafter read out to Subhadrabai. Subhadrabai then put her thumb mark on the Will in presence of the attesting witnesses Bhimrao as well as

Mahadeo. It is then stated in the cross-examination that all the five people including Subhadrabai and the two attesting witnesses Bhimrao and Mahadeo went to the office of Sub Registrar for registering the Will.

In view of the aforesaid oral evidence which is tendered on behalf of the defendants by the attesting witness, it cannot be said that there was a non-compliance of the provisions of Section 63(C) of the Indian Succession Act. Both the Courts have rightly considered the evidence of the attesting witness who was examined on behalf of the respondents, to hold that the execution of the Will was validly proved by the attesting witness.

For the aforesaid reasons, second appeal fails and is dismissed with no order as to costs.

JUDGE

RMP